

Exhibit 1B

Cause #

**16C C.J.S. Constitutional Law § 1538**

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**Constitutional Law**

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**PART VI. Privileges and Immunities; Equal Protection**

**XVII. Subjects and Applications of Equal Protection Guarantee**

**K. Taxation; Licenses, and License Taxes**

**2. Licenses and License or Occupational Taxes**

**c. Particular Occupations, Trades, Businesses, or Professions**

**(1) Occupations, Trades, or Businesses**

**§ 1538. Motor carriers and transportation agents**

[Topic Summary](#) | [References](#) | [Correlation Table](#)

**West's Key Number Digest**

West's Key Number Digest, [Constitutional Law](#) 🔑 3686

**Reasonable occupation taxes may be imposed on motor carriers and transportation agents without contravening the constitutional provisions as to equal protection.**

Courts have, under the Equal Protection Clause, upheld legislation providing for the licensing of, and the imposition of license fees or taxes on, motor carriers<sup>1</sup> as well as like legislation with respect to motor transportation agents<sup>2</sup> and have likewise held other legislation unconstitutional as denying the equal protection of the laws to such carriers<sup>3</sup> or agents.<sup>4</sup> A statute taxing motor carriers may properly be confined to carriers of a particular class, such as carriers with fixed termini<sup>5</sup> or carriers doing an intercity business.<sup>6</sup>

For purposes of imposing different rates of taxation or creating exemptions, carriers may be subdivided into particular classes,<sup>7</sup> such as those who operate wholly within a municipality,<sup>8</sup> private carriers operating within a specified distance from

their established place of business<sup>9</sup> or solely between points without railroad facilities and not passing through or beyond municipalities having such facilities,<sup>10</sup> taxicab drivers,<sup>11</sup> farmers transporting their own products and supplies to and from market,<sup>12</sup> carriers of agricultural products<sup>13</sup> or the like,<sup>14</sup> or public carriers engaged in transporting school children,<sup>15</sup> mail,<sup>16</sup> or newspapers.<sup>17</sup> However, an exemption of certain carriers from such a tax which lacks a rational basis, is arbitrary, or unreasonably discriminates violates the Equal Protection Clause.<sup>18</sup>

Subject to the general requirements of such a tax, the tax may be graduated;<sup>19</sup> and taxes graduated according to the gross earnings of the carrier,<sup>20</sup> the number of miles traveled in the state,<sup>21</sup> or the seating capacity of buses,<sup>22</sup> or the distance of hauls,<sup>23</sup> have been held not to contravene the constitutional provision. Statutory provisions for the suspension of licenses for the violation of highway regulations have been held not to violate the Equal Protection Clause.<sup>24</sup>

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#### Footnotes

- 1 Ariz.—*Shaw v. State*, 8 Ariz. App. 447, 447 P.2d 262 (1968).  
Ark.—*U-Drive-Em Corp. v. Wiseman*, 189 Ark. 1163, 76 S.W.2d 960 (1934).  
Ky.—*American Trucking Ass'n, Inc. v. Com., Transp. Cabinet*, 676 S.W.2d 785 (Ky. 1984).
- 2 Tenn.—*Bowen v. Hannah*, 167 Tenn. 451, 71 S.W.2d 672 (1934).  
**Highways not served by certified carriers**  
Cal.—*People v. Henry*, 131 Cal. App. 82, 21 P.2d 672 (2d Dist. 1933).
- 3 U.S.—*Smith v. Cahoon*, 283 U.S. 553, 51 S. Ct. 582, 75 L. Ed. 1264 (1931).  
N.H.—*State v. Moore*, 91 N.H. 16, 13 A.2d 143 (1940).  
N.J.—*Motor Cargo v. Division of Tax Appeals, Dept. of Treasury*, 10 N.J. 580, 92 A.2d 774 (1952).
- 4 Or.—*U. S. Automobile Service Club v. Van Winkle*, 128 Or. 274, 274 P. 308 (1929).
- 5 U.S.—*Johnson Transfer & Freight Lines v. Perry*, 47 F.2d 900 (N.D. Ga. 1931).
- 6 Okla.—*Pure Oil Co. v. Oklahoma Tax Commission*, 1936 OK 516, 179 Okla. 479, 66 P.2d 1097 (1936).
- 7 La.—*Matthews v. Conway*, 179 La. 875, 155 So. 255 (1934).  
Miss.—*Hudson v. Stuart*, 166 Miss. 339, 145 So. 611 (1933).  
**Hauling of overlength loads**  
Mo.—*Park Transp. Co. v. Missouri State Highway Com'n*, 332 Mo. 592, 60 S.W.2d 388 (1933).
- 8 U.S.—*Continental Baking Co. v. Woodring*, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).  
Mo.—*State ex rel. Illinois Greyhound Lines v. Public Service Com'n*, 341 Mo. 190, 108 S.W.2d 116, 115 A.L.R. 1097 (1937).  
Wis.—*Hillside Transit Co. v. Larson*, 265 Wis. 568, 62 N.W.2d 722 (1954).
- 9 U.S.—*Continental Baking Co. v. Woodring*, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).
- 10 U.S.—*Aero Mayflower Transit Co. v. Georgia Public Serv. Com'n*, 295 U.S. 285, 55 S. Ct. 709, 79 L. Ed. 1439 (1935).
- 11 Ark.—*Potts v. McCastlain*, 240 Ark. 654, 401 S.W.2d 220 (1966).  
Cal.—*Luxor Cab Co. v. Cahill*, 21 Cal. App. 3d 551, 98 Cal. Rptr. 576 (1st Dist. 1971).  
Mich.—*Kon v. City of Ann Arbor*, 41 Mich. App. 307, 199 N.W.2d 874 (1972).
- 12 U.S.—*Continental Baking Co. v. Woodring*, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).
- 13 U.S.—*Aero Mayflower Transit Co. v. Georgia Public Serv. Com'n*, 295 U.S. 285, 55 S. Ct. 709, 79 L. Ed. 1439 (1935).  
N.D.—*Figenskau v. McCoy*, 66 N.D. 290, 265 N.W. 259 (1936).  
Wis.—*Hillside Transit Co. v. Larson*, 265 Wis. 568, 62 N.W.2d 722 (1954).
- 14 Wis.—*Hillside Transit Co. v. Larson*, 265 Wis. 568, 62 N.W.2d 722 (1954).

**Logs, lumber, and cotton**

Okla.—Pure Oil Co. v. Oklahoma Tax Commission, 1936 OK 516, 179 Okla. 479, 66 P.2d 1097 (1936).

15 U.S.—Continental Baking Co. v. Woodring, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).

Ind.—Kelly v. Finney, 207 Ind. 557, 194 N.E. 157 (1935).

16 Ind.—Kelly v. Finney, 207 Ind. 557, 194 N.E. 157 (1935).

17 Ind.—Kelly v. Finney, 207 Ind. 557, 194 N.E. 157 (1935).

18 **Carrier of general commodities**

Mont.—Garrett Freightlines, Inc. v. Montana R. R. and Public Service Commission, 161 Mont. 482, 507 P.2d 1040 (1973).

19 N.C.—Clark v. Maxwell, 197 N.C. 604, 150 S.E. 190 (1929), *aff'd*, 282 U.S. 811, 51 S. Ct. 211, 75 L. Ed. 726 (1931).

20 U.S.—Prouty v. Coyne, 55 F.2d 289 (D.S.D. 1932), decree rev'd on other grounds, 289 U.S. 704, 53 S. Ct. 658, 77 L. Ed. 1461 (1933).

Pa.—Shirks Motor Exp. Corp. v. Messner, 375 Pa. 450, 100 A.2d 913 (1953).

21 U.S.—Alkazin v. Wells, 47 F.2d 904 (S.D. Fla. 1900).

**Ton mile tax**

Wis.—Hillside Transit Co. v. Larson, 265 Wis. 568, 62 N.W.2d 722 (1954).

**Requirement of deposit**

U.S.—Johnson Transfer & Freight Lines v. Perry, 47 F.2d 900 (N.D. Ga. 1931).

22 S.D.—State v. Black Hills Transp. Co., 71 S.D. 28, 20 N.W.2d 683 (1945).

23 N.C.—Clark v. Maxwell, 197 N.C. 604, 150 S.E. 190 (1929), *aff'd*, 282 U.S. 811, 51 S. Ct. 211, 75 L. Ed. 726 (1931).

24 Ill.—Hayes Freight Lines, Inc. v. Castle, 2 Ill. 2d 58, 117 N.E.2d 106 (1954), judgment *aff'd*, 348 U.S. 61, 75 S. Ct. 191, 99 L. Ed. 68 (1954).

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